

The 25th October, 1967

No. 10289-3 Lab-67/31449.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following arbitration award of Shri K. L. Gosain, Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of Government Engineering Workshop, Nilokheri (Karnal).

**BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, CHANDIGARH**

Reference No. 66 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF GOVERNMENT ENGINEERING WORKSHOP, NILOKHERI (KARNAL)

Present. Sh. V.P.S. Kashyap for the management.
Shri Jai Gopal, for the workmen,

ARBITRATION AWARD

Government Engineering Workshop Workers Union, Nilokheri (Karnal) served 3 demand notices on the management of the Government Engineering Workshop, Nilokheri which are dated 15th January, 1966, 10th February, 1966 and 19th March, 1966. In the aforesaid notices several demands were raised by the said union on behalf of the workmen of the concern. The conciliation proceedings with regard to the disputes thus raised having presumably failed, the parties agreed to refer the said disputes to my arbitration, and the Haryana Government thereupon issued notification No. 5394, 3Lab-67/dated 18th July, 1967, making a reference of the said dispute to me under sub-section 3 of section 10(a) of the Industrial Disputes Act, 1947. In the agreement of arbitration the specific matter in dispute is stated as:—

“Notice of demands dated 15th January, 1966, 10th February, 1966 and 19th March, 1966 (copies enclosed).”

In the notice dated 15th January, 1966, only one demand is mentioned and it is in the following terms:—

“That Sarvshri Mahnga Ram and Labh Singh Hammerman be re-instated to their job with continuity in service and with their full back wages.”

In the notice dated 10th February, 1966 reference is made to the demands made by the union by means of their resolution, a copy of which is attached with the said notice. The demands mentioned in the said resolution are six in number and are as follows:—

1. The annual increment be allowed.
2. Dearness allowance at 25 per cent of the wages be allowed for the year 1964-65.
3. Bonus be paid.
4. Categorisation of the workers according to the nature of work be done.
5. A scheme of gratuity be introduced.
6. Medical facilities to the employees.

In the notice dated 19th March, 1966 two demands are mentioned and they are as under:—

1. That Shri Labh Singh unskilled and Banarsi Dass Semi Skilled Blacksmith whose services have been illegally terminated on 10th February, 1966, 13th December, 1965 be reinstated forthwith with back wages.
2. That wages for the period 15th, 16th and 17th December, 1965 and February 26th and 27th 1966 be paid to all the workers.

Evidently the parties have referred to my arbitration all the 9 demands mentioned above.

On receipt of the reference I issued notices to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. In the form meant for notices to the parties the exact demands of the workmen are always mentioned. By mistake, however, my office omitted to mention in the notices issued to the parties the demands made in the notices dated 15th January, 1966 and 19th March, 1966. When the omission came to my notice I specifically passed an order informing the parties about the said demands and calling upon them to adduce their evidence not rely with regards to the demands mentioned in the usual notices but also in respect of those mentioned in the demand notices dated 15th January, 1966 and 19th March, 1966. The parties thereupon led their entire evidence with regard to all the demands and I had

also the advantage of hearing arguments of their representatives. My findings on the various demands are as follows:—

1. *Demand mentioned in the notice of demands, dated 15th January, 1967.*—It is a common case of the parties that Mahnga Ram and Labh Singh were dismissed by the management with effect from 3rd January, 1966 and 27th November, 1965, respectively. Although the dismissal orders were passed against them on later dates they were given retrospective effect from the above dates which were originally the dates of suspension of each of them. The onus of proof that the dismissal/termination of services of the aforesaid two workmen was justified and in order obviously lay upon the management. The case of the management is that Mahnga Ram refused to obey certain orders of the management and was charge-sheeted for the said offence. His explanation did not satisfy the management and orders of his suspension were, therefore, passed:—He refused to accept the orders of suspension and the management then dismissed him. In respect of Labh Singh the case of the management is that he had a fight with some other workmen and was charge-sheeted for the same. His explanation was also found to be unsatisfactory and the management first suspended him and later dismissed him. It is rather curious that no domestic enquiry was held against any of them. No Enquiry Officer was even appointed for the purpose of holding the enquiry and no witnesses were examined in presence of any of them. The management perhaps was entirely ignorant of the fact that the orders of dismissal could not be passed against any workman without any enquiry being held against him and without complying with the most important rule of natural justice that no one would be condemned without an opportunity being given to him to have a say. Obviously the dismissal of both these workmen is unjustified and not in order. The management is, therefore, directed to re-instate both of them and to pay them half of their usual wages from the date of dismissal of each of them to the date each of them is actually reinstated.

2. *Demand mentioned in the demand notice, dated 10th February, 1966.* There are six demands made in this notice and I record below my findings on each of them separately.

Demand No. 1.—The workmen are employed on daily rates and there are no grades and scales fixed for their wages. In practice the management has been allowing some increments to their workmen from time to time but they have never adopted any regular scales for such increments. The case of the management is that whenever they earned profits they used to increase the wages of the workmen to some extent but giving of increments was not a regular feature. I feel that it is unfair to the workmen that they should be permanently kept on daily rates and that no regular grades and scales should be fixed for them. Unfortunately, however, they have not raised such a demand and have not led any evidence to prove any basis on which I could allow them annual increments. This demand is, therefore, dismissed.

Demand No. 2.—There can be no doubt that the cost of living has considerably increased and that the cost of living index for working classes has gone up considerably in recent years, and more especially in the last one year. Ordinarily it would have been difficult for the management to resist the demand for the dearness allowance and if I were satisfied that the management was able to bear the burden I would have certainly allowed the said demand. The management has, however, placed before me unimpeachable data which fully proves that for the last three years the concern has suffered losses, and that the figures of losses have been going up from year to year. It is a well known principle of law that if the concern is not able to bear the burden of the dearness allowance, no such allowance can be allowed by industrial adjudication. The demand is accordingly dismissed.

Demand No. 3.—The case of the workmen is that bonus should be paid to them under the Payment of Bonus Act, 1965. The said demand cannot obviously be allowed because by reason of clause (IV) of Section 32 of Payment of Bonus Act, 1965, the said Act does not apply to persons employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or State Government or Local Authority. Section 20 of the Act also does not help them. No other basis have been given by the workmen in support of their claim for payment of bonus to them. The demand is accordingly dismissed.

Demand No. 4.—No evidence has been led by the workmen to prove this demand. On the other hand the management have proved that they have already categorised the workmen. In the circumstances no further categorisation is possible. If the workmen

are dissatisfied with the categorisation already made by the management they should raise a specific demand on the point and the said demand will then be adjudicated in a proper reference. The demand is accordingly dismissed.

Demand No. 5.—No material has been placed before me in support of this demand. No scheme for gratuity can be introduced in any concern unless a finding is recorded that the said concern is able to bear the burnden of the scheme. I have already pointed out in an earlier part of this award that the Government Engineering Workshop has been suffering losses for the last three years. The demand in the circumstances is dismissed.

Demand No. 6.—It is a common case between the parties that certain medical facilities were given to the workmen at the time when the workshop was under the Rehabilitation Department. The case of the parties is that ever since this workshop came under the department of agriculture the said medical facilities have been withdrawn. No material has been placed before me by the management nor has any justification been pleaded by the management for withdrawal of the said facilities. The mere fact that the workshop has now ceased to be under one department of the Government and has been placed under another department cannot be enough to enable the management to withdraw the medical facilities, already allowed to the workmen. It is a well known rule of law that no change in the conditions of service of the workmen which may prejudicially affect them can be unilaterally made. In the circumstances I direct the management to revive and reintroduce the medical facilities which were previously available to the workmen immediately before the date they were withdrawn. The management will do this within 3 months from the date of publication of this award in the official gazette.

3. *Demand mentioned in the demand notice dated 19th March, 1967.*—Two demands are made in this notice but no evidence has been led in respect of any of them and both are accordingly dismissed as unsubstantiated.

No order as to costs.

Dated 20th October, 1967.

K.L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

Endorsement No. 1235, dated Chandigarh, the 21st October, 1967.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required by Section 15 of the Industrial Disputes Act, 1947.

K.L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

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R.I.N. AHOOJA, Secy.